

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SAINT PAUL CITY COUNCIL

In the Matter of the License
Application of Thu Dinh Trinh
d/b/a Song Thanh Billiard

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge Beverly Jones Heydinger, commencing at 9:30 a.m., June 20, 2000, at the St. Paul City Hall, Room 41, 15 West Kellogg Boulevard, Saint Paul, Minnesota. The hearing was held pursuant to a Notice of Hearing dated May 10, 2000, signed by Virginia D. Palmer, Assistant City Attorney, on behalf of the City of St. Paul. Ms. Palmer, 400 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, appeared on behalf of the City. Kenneth M. Bottema, Attorney at Law, 50 Whitney Square, 210 North Second Street, Minneapolis, Minnesota 55401, appeared on behalf of Thu Dinh Trinh d/b/a Song Thanh Billiard, the Applicant. The record closed at the end of the hearing on June 20, 2000.

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations.^[1] Pursuant to Minn. Stat. § 14.61 (1998), the City Council shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the City Council must consider the exceptions in making a final decision. A copy of the City Council's decision must be served on the parties and the Administrative Law Judge by first class mail.^[2] Parties should contact the Saint Paul City Council, 310 City Hall, Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF THE ISSUES

The issue presented at this hearing was:

Should the City grant a Pool and Billiard Hall and related licenses to the Applicant?

FINDINGS OF FACT

1. The Applicant, Thu Dinh Trinh, d/b/a Song Thanh Billiard, has applied for the necessary licenses to operate a pool hall at 995 University Avenue West, St. Paul, MN 55104. These include licenses to operate a pool and billiard hall, to sell cigarettes or tobacco products, to sell pre-packaged food and for two mechanical amusement devices.

2. Other businesses are located at the same address or near the Applicant's business. Also, a prior license holder did operate a billiard hall at the same address.^[3]

3. The City's Office of License, Inspections and Environmental Protection (LIEP) reviewed the application and recommended approval.^[4]

4. As a courtesy, LIEP notified the local community council, the District 7 Planning Council, of the application, and gave the Planning Council the opportunity to request a legislative hearing. The Planning Council did request a hearing, and one was held.^[5]

5. The LIEP summarized the licensing application for the legislative hearing officer, Mr. Gerald Strathman, and recommended that the licenses be approved.^[6]

6. At the hearing, a letter was submitted by the Planning Council, dated March 6, 2000, signed by Michael Samuelson, its Executive Director. It expressed the concerns of persons who lived in close proximity to Mr. Trinh's business. Attached to the letter was a petition signed by many neighbors who objected to the issuance of the licenses.^[7]

7. The Planning Council was concerned about loud noise and rude behavior by persons leaving the business, particularly at closing time. It was also concerned about trash left along front yards, streets and sidewalks, and with late night traffic from an exit onto Sherburne Avenue, a residential street.

8. With the assistance of the legislative hearing officer, the District Council representative and Mr. Trinh agreed to certain conditions to address the Planning Council's concerns. In particular, Mr. Trinh agreed to the following:

- To limit the hours that the business operates, closing no later than 12:00 PM (sic) on Friday and Saturday;
- To provide security in the parking lot, to eliminate loitering and unnecessary disturbances;
- To post signs in and out of the building stating that loitering, drinking, use of illegal substances, littering and loud noises are prohibited;
- To prohibit display of gang colors;
- To pick up the litter in front of the business and in the parking lot each day.^[8]

9. Mr. Trinh signed that agreement on April 26, 2000.^[9]

10. LIEP's position is that the conditions address the concerns raised by the District Council.^[10]

11. Believing that Mr. Trinh and the Planning Council had reached an agreement, LIEP placed approval of the Applicant's licenses on the City Council's agenda for April 26, 2000.

12. When the matter came before the City Council for review, the Planning Council continued to object. Its concerns were reiterated in a letter to Council Member Jerry Blakey, dated April 26, 2000. The letter stated that the Planning Council's Physical Planning Committee had met on April 24, 2000, to consider the licenses, including the conditions agreed upon by Mr. Trinh, but decided to continue its opposition to them because of the ongoing objections of the immediate neighbors to the business.^[11]

13. The City Council voted on April 26, 2000, to refer the matter to an Administrative Law Judge for hearing.^[12]

14. Notice of this hearing was sent to Mr. Trinh and to the Planning Council on May 10, 2000.

15. The LIEP continues to support the application and recommends that the licenses be issued, with the agreed-upon conditions.^[13]

16. Mr. James Wentzell, the Acting Executive Director of the District 7 Planning Council, expressed the Planning Council's concerns. The Planning Council has continued to receive calls from neighbors objecting to the business, and opposes the issuance of the licenses. In particular, the neighbors are concerned about noise, especially at the time the business closes, litter and traffic speeding in the nearby neighborhood. Mr. Wentzell acknowledged that other businesses shared the property, but neighbors believed that the objectionable behavior was tied to Mr. Trinh's business because the persons were not speaking English. However, Mr. Wentzell could not

provide any details about the dates, times or types of incidents that caused the neighbors' complaints.

17. Since no license has issued, and the conditions agreed to by Mr. Trinh are not in effect, LIEP has not investigated to see if there is compliance with the conditions. ^[14]

18. The Planning Council and Mr. Trinh are willing to meet with each other and with nearby businesses to address the on-going concerns of the neighbors.

19. Any Finding of Fact more properly termed as a Conclusion is hereby adopted as a Conclusion.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Saint Paul City Council have jurisdiction in this case. ^[15]

2. The Applicant received timely and proper notice of the hearing and the City has complied with all relevant substantive and procedural requirements of statute and rule. ^[16] The City has provided notice of the hearing to the local community organization.

3. The City has authority to grant a license and to impose certain conditions on that license. ^[17]

4. The Applicant has shown by a preponderance of the evidence that he has met the requirements for a license for pool and billiard hall, and related licenses.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that Thu Dinh Trinh's application to operate a pool and billiard hall, with related licenses, be GRANTED.

Dated this 27th day of June, 2000.

Beverly Jones Heydinger
Administrative Law Judge

Reported: Tape-recorded (two tapes)

MEMORANDUM

Opposition to the licenses comes from neighbors. Twenty nine of them signed a petition on February 29, 2000, opposing the licenses. Since that time, Mr. Trinh has appeared at the legislative hearing and at this hearing to hear the complaints against him. He has agreed to certain conditions intended to address those complaints. Exhibit 4 states that the District Council continued to object in April because of the concerns expressed in February, but there is no evidence of whether those who signed the petition were aware of the conditions to which Mr. Trinh had agreed. No specific complaints were raised at this hearing. Absent any specifics, it is difficult for Mr. Trinh to address them, or for the Administrative Law Judge to evaluate whether they are sufficient to warrant denying the licenses. Based on the evidence presented, the licenses should be issued.

BJH

^[1] St. Paul Legislative Code § 310.05 (c-1).

^[2] Minn. Stat. § 14.62, subd. 1 (1998).

^[3] Testimony of Kristine Schweinler.

^[4] Testimony of K. Schweinler, Senior Licensing Inspector.

^[5] Testimony of K. Schweinler. Although there is no direct evidence, it appears that the legislative hearing was held on April 17, 2000.

^[6] Ex. 3.

^[7] Ex. 2.

^[8] Ex. 5.

^[9] Id.

^[10] Testimony of K. Schweinler.

^[11] Ex. 4.

^[12] Ex. 6.

^[13] Testimony of K. Schweinler.

^[14] Testimony of K. Schweinler.

^[15] Minn. Stat. § 14.55 (1998); Saint Paul Legislative Code, § 310.05.

^[16] See Minn. Stat. § 14.57 – 14.61, Saint Paul Legislative Code § 310.05.

^[17] Saint Paul Legislative Code §§ 310.04 and 310.06.